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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE  
M-00001435;  
R-00016683

September 6, 2001

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*Ex Parte*

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-B204  
Washington, D.C. 20554

**Re: Application of Verizon Pennsylvania, Inc. For Authorization to  
Provide In-Region, InterLATA Service in Pennsylvania**

**CC DOCKET NO. 01-138**

Dear Ms. Salas:

In response to a request by staff of the Common Carrier Bureau, the Pennsylvania Public Utility Commission hereby submits an official copy of its recently adopted order in the context of unbundled network element pricing. The order was entered August 31, 2001, at PA PUC Docket No. R-00016683. Four additional copies are also enclosed for your records.

One minor clarification concerning footnote 3 of the attached PA PUC order may be helpful to clarify the procedural history of UNE rates in Pennsylvania. Footnote 3 references certain "MFS III" rates and notes that such rates are challenged by WorldCom, AT&T and Verizon. WorldCom and AT&T challenge the MFS III Order UNE rates; Verizon challenges the wholesale discount rates. Verizon has not challenged the MFS III Order UNE rates.

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If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



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**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17105-3265**

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Public Meeting held August 30, 2001

**Commissioners Present:**

Glen R. Thomas, Chairman  
Robert K. Bloom, Vice Chairman  
Aaron Wilson, Jr.  
Terrance J. Fitzpatrick

Generic Investigation Re Verizon  
Pennsylvania, Inc.'s Unbundled  
Network Element Rates

Docket No. R-00016683

**ORDER INSTITUTING GENERIC INVESTIGATION  
OF VERIZON'S UNE RATES**

**BY THE COMMISSION:**

This order directs the initiation of a proceeding effective September 17, 2001, to consider whether the existing tariffed rates for Verizon Pennsylvania, Inc.'s<sup>1</sup> (Verizon's) unbundled network elements (UNEs) continue to be just and reasonable. The proceeding shall commence before the Office of Administrative Law Judge (OALJ) and shall proceed apace.

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<sup>1</sup> Verizon Pennsylvania, Inc. was formerly known as Bell Atlantic-Pennsylvania, Inc.

## Procedural History

### A. MFS III Order

In the MFS III Order,<sup>2</sup> we established permanent rates for the UNEs offered for lease by Verizon. The Commission established the rates based on a cost model proposed by Verizon. This was the first time permanent UNE rates were established. The order made note of the Commission's prerogative to institute a subsequent investigation for the purpose of re-examining the rates. The approved rates were filed in Verizon's Tariff No. 216 and incorporated into appropriate interconnection agreements between Verizon and competing carriers.<sup>3</sup>

### B. Global Order

In the Global Order,<sup>4</sup> we reviewed the rates established by the MFS III Order. The Global Order modified two key input factors used in the MFS III proceeding and established new permanent UNE rates in full accord with TELRIC pricing principles.<sup>5</sup> The rates continued to be based on the Verizon cost model,

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<sup>2</sup> Application of MFS Intelenet of Pennsylvania, Inc., Docket No. A-310203F0002 *et al.*, Order (entered August 7, 1997).

<sup>3</sup> Litigation on the lawfulness of the MFS III Order rates is ongoing in federal court. MCI Telecom. Corp. v. Verizon Pennsylvania, Inc., No. 00-2257 (3<sup>rd</sup> Cir., filed July 28, 2000) (appeal challenging federal court jurisdiction and judgment of United States District Court for the Middle District of Pennsylvania, Case No. 1-97-CV-1857). These rates are challenged by MCI WorldCom, AT&T and Verizon.

<sup>4</sup> Joint Petition of Nextlink Pennsylvania, Inc., et al., 196 P.U.R.4<sup>th</sup> 172 (Pa. PUC 1999), *aff'd* sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n, 763 A.2d 440 (Pa. Cmwlth. 2000).

<sup>5</sup> Litigation on the lawfulness of the Global Order rates is ongoing in federal court. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n, No. 00-2620 (3<sup>rd</sup> Cir., filed Aug. 30,

but certain input factors were changed resulting in an overall reduction in the rates. We also ordered Verizon to provide some additional UNEs in accordance with applicable law and, shortly thereafter, initiated an expedited proceeding<sup>6</sup> to establish rates for the non-priced UNEs.

### C. Bell/GTE Merger Order

In the Bell/GTE Merger Order,<sup>7</sup> we approved the proposed merger between Bell Atlantic-Pennsylvania, Inc. (now Verizon Pennsylvania, Inc.) and GTE North, Inc. (now Verizon North, Inc.). Approval was tied to the companies' acceptance of certain conditions, including a requirement to commence a proceeding for the purpose of determining statewide UNE rates based upon consolidated cost studies. Ordering para. 12. The companies accepted the conditions.

Verizon Pennsylvania, Inc. and Verizon North, Inc. are required to commence the proceeding on or before December 30, 2002 (within 30 months of the June 30, 2000 merger consummation date).

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2000) (interlocutory appeal challenging federal court jurisdiction over the underlying complaint, cross-claims and counterclaims filed in the United States District Court for the Eastern District of Pennsylvania, Case No. 99-CV-5391). Verizon has expressed its intent to withdraw its complaint, but MCI WorldCom and AT&T continue to litigate their claims.

<sup>6</sup> Re: Further Pricing of Bell Atlantic-PA, Inc.'s Unbundled Network Elements, Docket No. R-00005261, Order (entered April 27, 2000).

<sup>7</sup> Joint Application of Bell Atlantic Corp. and GTE Corp. for Approval of Agreement and Plan of Merger, Docket No. A-310200F0002 *et al.*, Order (entered Nov. 4, 1999).

#### D. Functional Structural Separation Order

In the Functional Structural Separation (FSS) Order,<sup>8</sup> we considered the structural separation of Verizon's retail and wholesale operations in Pennsylvania. In lieu of the possibility of full structural separation and the litigation that would likely follow, we offered Verizon the option of accepting our terms for a functional/structural separation. FSS Order at p. 31. Some terms concerned UNE rates. The UNE rate terms consisted of (1) an immediate \$0.75 reduction in the 2-wire loop rates in the most rural areas of Pennsylvania (the so-called "Density Cell 4"), Ordering para. 18; and (2) commencement of a new proceeding to determine whether any further adjustment of UNE rates is necessary and to "result in a report and recommendation to the Commission decision, no later than December 31, 2001." Ordering para. 19. Verizon accepted the terms.

#### E. Further UNE Pricing Interim Order

In the Further UNE Pricing Interim Order,<sup>9</sup> we addressed rates for the "unpriced" UNEs. Those are the UNEs that were newly unbundled in conformance with our Global Order as well as those network elements that were

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<sup>8</sup> Re: Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations, Docket No. M-00001353, Order (entered April 11, 2001); see also Letter of Verizon-PA Vice President and General Counsel Julia A. Conover to PUC Secretary James J. McNulty dated April 20, 2001 (notifying Commission that Verizon PA accepts the terms and conditions contained in the April 11 Order).

<sup>9</sup> Further Pricing of Verizon Pennsylvania Inc.'s Unbundled Network Elements, Docket Nos. R-00005261 *et al.*, Interim Opinion and Order (entered June 8, 2001).

subsequently unbundled on a national basis by the Federal Communications Commission (FCC) in its UNE Remand Order.<sup>10</sup>

Compliance with the Further UNE Pricing Interim Order is being completed in two phases. The first phase compliance filing was made July 11, 2001. The second and final phase compliance filing is due on or before September 28, 2001; this filing will be made to correct input errors relating to land and building and shared expenses. Meantime, all the rates are interim subject to true-up and refund. The rates filed pursuant to this Interim Order are also subject to further review, adjustment and potential refund based on the results of the next UNE rate proceeding provided for in ordering paragraph 19 of our FSS Order. Interim Order, ordering para. 6.

F. Consultative Report in the Matter of Verizon's Section 271 Application

We recently concluded that Verizon's UNE rates comply with federal law for purposes of Verizon's compliance with the statutory requirements of 47 U.S.C. § 271. Consequently, we recommended to the FCC that it grant Verizon's pending application for authority to offer in-region, interLATA service in Pennsylvania. Application of Verizon Pennsylvania, Inc., *et al.*, CC Docket No. 01-138, PA PUC Consultative Report (filed June 26, 2001, Federal Communications Commission) at 49 – 61.

The statutory deadline for completion of the FCC's review of the application is September 19, 2001.

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<sup>10</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238, Third Report and Order (rel. Nov. 5, 1999).

#### G. MCI's Motion To Enforce Functional/Structural Separation Order

On July 29, 2001, MCI WorldCom (MCI) filed a "Motion To Enforce Commission Orders To Initiate UNE Rate Proceeding And Establish Schedule." On July 30, Verizon filed a response to MCI's motion. On August 9, MCI filed a letter in reply to Verizon's response. On August 13, RCN Telecom Services of Philadelphia, Inc. (RCN) filed a letter in support of MCI's motion. On August 16, Verizon PA filed a letter in reply to MCI's letter of August 9.

MCI moves the Commission to "[p]romptly initiate a proceeding to examine the rates Verizon charges competitive local exchange carriers ('CLECs') for unbundled network elements," to "[e]stablish a schedule for completion of that docket by December 31, 2001 as required by its own orders," and to "[o]rder such other relief as this Commission deems necessary and appropriate." In support, MCI's makes a number of assertions. These include assertions that UNEs are critical to a CLEC's business, the existing UNE rates are excessive, and the proceeding is called for in the FSS Order, as confirmed by the Further UNE Pricing Interim Order. MCI's letter response essentially argues that Verizon agreed to the relief requested – a new UNE pricing proceeding to be completed by December 31, 2001 – when it accepted the Commission's terms in the FSS Order.

In support of MCI's motion, RCN states that the rates Verizon charges competitors for use of Verizon's UNEs are a critical component of the cost of doing business. RCN requests that the Commission give consideration to specific rates for Calling Name (CNAM) Service.<sup>11</sup> Because there is no existing UNE rate

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<sup>11</sup> RCN states that Calling Name (CNAM) Service allows a CLEC to query Verizon's CNAM Database for CNAM information in order to deliver that information to the CLEC's local subscribers or to a CLEC's client's local subscribers. CNAM information is local exchange



specific to CNAM service, implicit in RCN's request is the need for the Commission to consider whether there should be a UNE rate specific to CNAM service.<sup>12</sup>

In opposition, Verizon argues that the Commission should deny MCI's motion and defer any new UNE investigation until December 31, 2002, when the consolidated cost proceeding is scheduled to commence pursuant to the Bell/GTE Merger Order. Verizon recognizes that the FSS Order states that there will be a UNE proceeding this year, but Verizon suggests that the Commission "can and should modify its thinking . . . [due to] a number of practical issues . . . ." Verizon Response at 3. The issues identified are that (1) any new rates would be outdated almost as soon as the proceeding ended due to the consolidated cost proceeding, (2) it is unrealistic to expect that a cost proceeding can be initiated and completed by the end of this year, noting that the MFS III proceeding took slightly over a year, (3) a hiatus period would avoid a possibly wasted effort in that the laws governing the pricing of UNEs are currently being reviewed by the Supreme Court of the United States, and (4) the Commission recently stated that the existing UNE rates comply with applicable pricing rules.<sup>13</sup>

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carriers' (LECs') (Verizon and other LECs whose information is administered by Verizon) records of all their subscribers' names as listed for one or more 10-digit lines or billing numbers.

<sup>12</sup> It is our understanding that the calling number is currently being provided and billed by Verizon under LIDB (line identifier data base), which includes fraud control that is needed to verify calling card numbers. CNAM service does not require the fraud protection aspect; therefore, RCN would like to see a rate for this service that is based on LIDB, excluding the cost of the fraud protection. See Verizon's Tariff 216, Section 3, 2nd Revised Sheet 12, Item C - LIDB Verification.

<sup>13</sup> In the Matter of Application of Verizon Pennsylvania, Inc. et al. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the Commonwealth of Pennsylvania, CC Docket No. 01-138, PA PUC Consultative Report (filed June 26, 2001) at 61.

## **Judicial Review of UNE Pricing Rules**

The Commission is required to establish UNE rates in compliance with applicable state and federal law. The relevant federal requirements are set forth in regulations promulgated by the FCC consistent with the federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* The UNE pricing regulations are promulgated at 47 C.F.R. §§ 51.501 – 51.515. See also 47 C.F.R. §§ 601 – 617 (resale); §§ 701 – 717 (reciprocal compensation for transport and termination of local telecommunications traffic).

The United States Court of Appeals for the Eighth Circuit reviewed the pricing methodology adopted by the FCC and other aspects of the FCC's implementation of the Telecommunications Act. The court of appeals held that use of a forward-looking cost methodology is reasonable, but use of a hypothetical network standard is not. Iowa Util. Bd. v. F.C.C., 219 F.3d 744, 749-753 (8<sup>th</sup> Cir. 2000), *cert. granted*, 121 S.Ct. 877-79 (2001) (Nos. 00-511, 00-555, 00-587, 00-590, and 00-602). Consequently, FCC Rule 51.505(b)(1) was vacated.<sup>14</sup> Id. at 751. The court of appeals also held that universal service subsidies should not be included in the costs of providing the network elements and that a “takings claim” argument (that TELRIC itself, because it is based on a hypothetical network, must result in rates that are neither just nor reasonable and confiscatory in the constitutional sense) was not ripe for review. Id. at 753-754. A number of litigants pursued further judicial review. The court of appeals stayed its mandate, pending Supreme Court review, with respect to the FCC's UNE pricing rules.

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<sup>14</sup> Proxy prices were also vacated. 219 F.3d at 756 – 757.

Currently, the Supreme Court of the United States is considering whether aspects of the FCC's UNE pricing rules are lawful. The Court's review is limited to the following questions:<sup>15</sup>

1. Whether the court of appeals erred in holding that 47 U.S.C. Sec. 252(d)(1) (Telecommunications Act of 1996) forecloses the cost methodology adopted by the FCC, which is based on the efficient replacement cost of existing technology, for determining the interconnection rates that new entrants into local telecommunications markets must pay incumbent local telephone companies.
2. Whether the court of appeals erred in holding that neither the Takings Clause nor the Telecommunications Act of 1996 requires incorporation of an incumbent local exchange carrier's "historical" costs into the rates that it may charge new entrants for access to its network elements.

Active parties include petitioners Verizon Communications, Inc. (No. 00-511), WorldCom, Inc. (No. 00-555), Federal Communications Commission and the United States (No. 00-587), AT&T Corp. (No. 00-590), General Communications, Inc. (No. 00-602) as well as other interested parties. Briefing is completed.

The Supreme Court is scheduled to hear oral argument on October 10, 2001.

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<sup>15</sup> A third and final question is before the Court in the consolidated cases. It is whether 47 U.S.C. § 251(c)(3) prohibits regulators from requiring that incumbent local telephone companies combine certain previously uncombined network elements when a new entrant requests the combination and agrees to compensate the incumbent for performing that task.

## Disposition

There is no dispute that the rates Verizon charges CLECs for use of Verizon's UNEs is a critical component of the cost of doing business in the Commonwealth of Pennsylvania. The existing rates are based on Verizon's cost model developed on or before 1997. Although we have revised and updated Verizon's UNE rates in several prior proceedings, we believe that, consistent with ordering paragraph 19 of the FSS Order, the existing UNE rates should be further reviewed to ascertain whether any further adjustments are necessary to insure that the UNE rates are just and reasonable. Verizon affirmatively agreed to this review when it accepted the terms and conditions of our FSS Order. Our Further UNE Pricing Interim Order provided notice of our continuing expectation of such review. We expect that Verizon has been making preparations for such review and that it will be able to comply with our directives.

We have no intention of waiting to initiate a review of Verizon's existing UNE rates until December 31, 2002, the date by which Verizon must commence a proceeding for the establishment of statewide UNE rates in compliance with our Bell/GTE Merger Order. Nevertheless, we recognize the legitimate concern of whether there is adequate time to complete a UNE rate proceeding by December 31, 2001, as called for in our FSS Order. Accordingly, the presiding ALJ is authorized to so extend the December 31, 2001, due date for the recommended decision until no later than April 30, 2002.

The new generic UNE rate proceeding shall commence on September 17, 2001. The scope of the proceeding will include cost model issues and input element issues to better conform the resulting rates to applicable pricing principles. Issues regarding the input elements may include, for example, Verizon's inclusion

of broadband facilities costs, depreciation live assumptions, repair and maintenance factors, investment in distribution cable, and digital loop carrier cost assumptions.

Due to our desire to keep the proceeding moving apace, and consistent with our express goal to review existing rates, the proceeding will consider rate issues only<sup>16</sup> and will consider neither whether any additional network elements should be unbundled nor whether any access to any currently unbundled network elements should be denied. Should any party wish to add or remove any UNE, then, the party is free to pursue that issue in the normal course of negotiation or arbitration with Verizon.

The OALJ shall insure that the recommended decision is completed in the appropriate time frame. The OALJ shall also insure that the recommended decision includes reference to the existing rate, the Verizon proposed rate, the alternative proposed rates, and the recommended rate for each UNE.

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<sup>16</sup> By operation of ordering paragraph 8 of the Further UNE Pricing Interim Order, any non-resolved technical issues coming out of the upcoming dark fiber workshop are referred to the generic UNE rate proceeding. The dark fiber issues are discussed at pages 54 through 58 of the Further UNE Pricing Interim Order. The workshop will be conducted by the Bureau of Fixed Utility Services and will address "the splicing issue and the other issues relative to identification of the existence and locate of unlit fibers." Id. at 58. These technical dark fiber issues are the only non-rate issues we are aware of that would be referred to the generic UNE rate proceeding as a result of the operation of paragraph 8. Accordingly, for purposes of administrative efficiency, if consensus is not reached in the workshop, then the Bureau of Fixed Utility Services may make a recommendation to the Commission to initiate a separate investigation into the technical issues, or otherwise dispose of any remaining disputed non-rate issues. Finally, if there are any other non-rate issues covered by paragraph 8, then parties should bring those issues to our attention immediately. It is not our intention to eliminate a forum for timely resolution of any such issue.

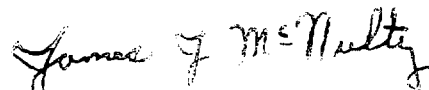
By its motion, MCI has proposed a schedule for completion of the proceeding. The recommendation cannot be adopted at this juncture because some of the proposed dates have past. We will not impose a schedule in this order, leaving it to the presiding ALJ and parties to work out the appropriate details, **THEREFORE,**

**IT IS ORDERED:**

1. That, MCI WorldCom's Motion to Enforce Commission Orders to Initiate UNE Rate Proceeding and Establish Schedule is hereby granted-in-part and denied-in-part consistent with this order.
2. That, RCN's request for development of a specific rate for Calling Name (CNAM) Service is denied without prejudice consistent with this order.
3. That the proceeding contemplated in Paragraph 19 of our order entered April 11, 2001 at Docket No. M-00001353 is hereby initiated, effective September 17, 2001.
4. That the Office of Administrative Law Judge shall conduct the proceeding consistent with this order.
5. That, pursuant to 52 Pa. Code § 1.2(c), the Presiding ALJ is authorized to waive appropriate sections of the Commission's rules of practice and procedure, as necessary, to resolve disputed issues and file a recommended decision on or before April 30, 2002.

6. That, the Secretary shall serve a copy of this order upon the parties of record in the matters of Structural Separation of Verizon Pennsylvania Inc.'s Retail and Wholesale Operations, Docket No. M-00001353, and Further Pricing of Verizon Pennsylvania, Inc.'s Unbundled Network Elements, Docket Nos. R-00005261 *et al.*

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: August 30, 2001

ORDER ENTERED: **AUG 31 2001**